In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1836

JOHN H. LIMBACK, PETITIONER

v.

CASPAR W. WEINBERGER, SECRETARY
OF HEALTH, EDUCATION AND WELFARE

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner was awarded Social Security disability benefits beginning in July 1968. By notice of June 1970, he was informed by the Social Security Administration of his ineligibility for receipt of such benefits between May 1970 and April 1971 because he had received a lump sum settlement of $11,475.00 under the Michigan Workmen's Compensation Act. This action was taken pursuant to Section 224 of the Social Security Act, 79 Stat. 406, as amended, 42 U.S.C. 424a, which required the total offset of the workmen's compensation settlement, representing $351.00 per month beginning in August 1968, against the disability insurance benefits of the Limback family of $310.40 per month for the specified period.

After exhausting his administrative remedies, petitioner brought suit in the district court challenging the constitutionality of the offset. Relying on *Richardson* v. *Belcher*, 404 U.S. 78, and *Lofty* v. *Richardson*, 440 F. 2d 1144 (C.A. 6), certiorari denied, 404 U.S. 985, which upheld the constitutionality of Section 224 against a virtually identical challenge, the district court dismissed Limback's complaint (Pet. 18-23). The court of appeals affirmed (Pet. 24).

The decisions of the courts below are correct. Precisely the same issue was raised in *Richardson* v. *Belcher*, *supra*, in which this Court held that Section 224 of the Social Security Act has a rational basis and does not violate the Due Process Clause of the Fifth Amendment. Further review of this issue by this Court is therefore not warranted.

For the foregoing reason, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JULY 1974.